

Court File: 32161

IN THE SUPREME COURT OF CANADA.

BETWEEN:

JOSHUA COHEN, B.A., M.A.

APPLICANT  
(Appellant)

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT  
(Respondent)

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APPLICATION FOR LEAVE TO APPEAL

(Section 40 of the *Supreme Court Act* and Rules 25 of the *Supreme Court of Canada*)

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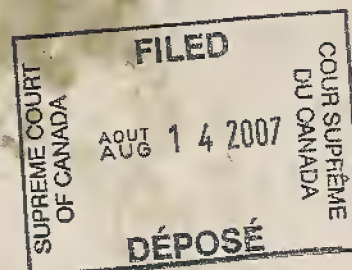
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**APPLICANT**  
(Appellant)

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(Respondent)

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**


**TAKE NOTE** that the Applicant hereby applies for leave to appeal to the Court, pursuant to Section 40 of the *Supreme Court Act* and Rule 25 of the *Rules of the Supreme Court of Canada*, from a judgment of the Federal court of Appeal rendered on May 15<sup>th</sup>, 2007 in case number A-278-06 of that Court, or such further or other order that the said Court may deem appropriate.

**AND FURTHER TAKE NOTE** that this Application For Leave is made on the following grounds, namely:

1. The judgment of the Federal Court of Appeal in respect of which leave is sought and the judgment of the Federal Court of Canada which was maintained raises issues of law related to disabled rights of national importance and ought, with respect, to be decided by this Honourable Court.
2. The principle issue raised relates to the "*standard of correctness*." The latter being the highest standard of judicial review and is thus being sought from the Highest Court. Herein, a substitution of opinion of the lower courts is invoked, wherein the Highest Court has greater expertise on the issue(s), especially in the area of human rights.

3. Since laws do not cover everything, either from the legislative and/or executive branches of gov't, an unwritten constitution can and should be sought to protect fundamental unwritten principles and rights, to keep within the scope of an evolving society. This is deferred to this Court's expertise, as applicable.
4. Where written principles are expressed, related to minority rights and the disabled, should they then be enforced to keep within the range of tolerance and changing times? Such issues relate to any breach of natural justice, procedural fairness and good faith, and not limited to:
  - a) *the duty of accommodation* of the disabled without undue hardship by
  - b) *duty to examine* new evidence before July 5<sup>th</sup>, 2004 closure
  - c) *to differentiate adversely* and thus *deprive of (equal) opportunity employment and discriminatory policy or practice* as confirmed
  - d) *duty to proceed* with file #20040226
  - e) *duty to disclose* the April 6<sup>th</sup>, 2004 Complaint Summary
  - f) *duty to act fairly*
  - g) *adequate reasons* for closure of file #20040226
5. Lastly, a most important test question is posed, related to the "*standard of correctness*" upon review of this case: "*What would an informed person, viewing the matter realistically, and practically-and have thought the matter through-conclude ...?*"

Dated at Ottawa, Province of Ontario, this 14<sup>th</sup> day of August, 2007

  
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**NOTICE TO THE RESPONDENT:** A Respondent may serve and file a Memorandum in Response to this Application for Leave to Appeal with 30 days after service of the Application. If no response is filed within that time, the Registrar will submit this Application for Leave to Appeal to the Court for consideration pursuant to Section 43 of the *Supreme Court Act*.

Court File 32161

**IN THE SUPREME COURT OF CANADA**

BETWEEN:

**JOSHUA COHEN, B.A., M.A.**

**APPLICANT**  
*(Appellant)*

AND:


**THE ATTORNEY GENERAL OF CANADA**

**RESPONDENT**  
*(Respondent)*

**CERTIFICATE**

I, the undersigned, **JOSHUA COHEN**, in capacity as Applicant self-representative, hereby certify that there is no sealing order or ban on the on the publication of evidence or the names or identity of a party or witness in this case.

Dated at Ottawa, Province of Ontario, this 14<sup>th</sup> day of August, 2007

  
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**Counsel for Respondent**

Federal Court



Cour fédérale

Date: 20060517

Docket: T-1710-05

Citation: 2006 FC 608

Ottawa, Ontario, May 17, 2006

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

MR. JOSHUA K. COHEN, B.A., M.A.

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Joshua Cohen, is a bright, educated person who suffers from hearing disability. He applied for a Management Training Position (MTP) with the federal government but did not succeed securing that position. The Applicant believed that such failure was due to discriminatory practices having regard to his disability whereupon he pursued the matter through the Human Rights Commission. The Commission rejected his complaint. Some fifteen months later the Commission received a further complaint from the Applicant arising out of the same failure to secure the position, which complaint was dismissed as being out of time, no extension of time was allowed. The Applicant seeks judicial review of this latter decision, asking that the matter be

referred back to the Commission for review by a different person. For the reasons that follow, I am dismissing this application but without costs.

[2] It is best to begin with a chronological review.

1. Events transpiring in the period from January 14, 2004 to February 6, 2004 are those giving rise to the complaints. These events are only briefly referred to in the Record but appear to relate to the Applicant's unsuccessful attempt in securing a Management Training Position. The Applicant believes that his lack of success was due to failure to give proper consideration to his hearing disability and, possibly, to religious bias.
2. On February 14, 2004 the Applicant contacted the Canadian Human Rights Commission and, on March 25, 2004 submitted a complaint form. This form was revised and supplemented in a further form submitted April 6, 2004.
3. On July 5, 2004 the Commission sent the Applicant a letter rejecting his complaint, it said, among other things "*I have carefully reviewed your document and must advise you that the Canadian Human Rights Commission cannot offer you assistance in this matter.*" This letter referred the Applicant to the Court Challenges Program as a possible ally in dealing with issues he might wish to raise.



4. The Applicant did apply to the Court Challenges Program in October 2004. The Program declined to assist the Applicant in a letter dated December 16, 2004 stating that it "*cannot provide funding to assist people with human rights complaints.*"
5. By letter dated April 22, 2005 directed to the Commission, the Applicant inquired as to whether an appeal within the Commission, was possible. He was advised that no appeal was provided.
6. Following what appears to be at least two telephone conversations, the Applicant filed a further complaint with the Commission on May 9, 2005. The basis for this is set out in a Memorandum to File from Hannya Rizk of the Commission dated May 3, 2005 which records her version of her telephone conversations with the Applicant. The Applicant has his own, brief, note of that conversation. Essentially the Applicant wanted to submit statistical information as to the lack of job opportunities for those with hearing disabilities. The Applicant believed that Rizk said that data would not be considered. Rizk says that she said that such data could not form the basis of a complaint but could support a complaint.

In any event the Applicant did submit this statistical material with his complaint filed May 9, 2005. The complaint was based on the same event namely the Applicant's failure to secure an MTP.

7. On June 15, 2005 the Commission wrote to each of the Applicant and the Public Service Commission of Canada, stating that a recommendation would be made that the complaint not be dealt with since more than one year had elapsed from the date of the event and the filing of the complaint of May 9, 2005. Further comments were solicited.
8. On July 4, 2005 and again on July 27, 2005 the Applicant submitted a detailed response giving his representations as to why the complaint should be heard. The Public Service Commission in a letter dated July 5, 2005 took the position that the Commission should not deal with the complaint of May 9, 2005.
9. By letter dated September 2, 2005 the Commission advised the Applicant that it would not deal with his complaint since it had been made more than one year after the event upon which the complaint was based, occurred. This is the decision under review.

[3] The Applicant says that he is entitled to a duty of fairness, a right of "*audi alterem partem*" so that his side of the story may be heard. He relies upon *Tiedeman v. Canadian Human Rights Commission* (1993) 66 F.T.R. 15 and in particular on a statement by Justice McGillis at paragraph 11:

*In rejecting the complaint of discrimination on the basis of non-compliance with the statutory time limit, the Commission failed to consider the submissions of Mr. Tiedeman dated April 26, 1990 addressing this specific issue. In conducting itself in this fashion, the Commission breached a basic principle of procedural fairness and acted unfairly. To solicit the representations of a party and, subsequently, to fail to consider them, renders hollow the hallowed principle of the right to be heard. The Commission therefore erred in law in exercising its discretion under subsection 41(e) of the Act and, in doing so, committed a reviewable error.*

[4] The Applicant says that his submission of May 9, 2005 was simply a revision of his application filed April 6, 2004. In doing so he is relying on *Tiwana v. Canadian Human Rights Commission* (2001), 197 F.T.R. 282 per Justice Pelletier (as he then was) at paragraphs 32 and 33:

*While it is true that there is no explicit statutory recognition of the right to amend a complaint, the Federal Court of Appeal recognized in Bell Canada v. Communications, Energy, and Paperworkers Union of Canada, [1999] 1 F. C. 113 at para. 45 that human rights claims can and, in certain circumstances, ought to be amended:*

*Where, therefore, an investigator in the course of investigating a complaint is provided with some evidence, not of her making, that there is a possible ground for discrimination which the complaint, as formulated, might not have encompassed, it becomes her duty to examine that evidence ... and even to suggest that the complaint be amended. To require the investigator in such a case to recommend the dismissal of the complaint for being flawed and to force the filing of a new complaint ... would serve no practical purpose. It would be tantamount to importing into human rights legislation the type of procedural barriers that the Supreme Court of Canada has urged not to be imported.*

*On the basis of the very same logic, and in the absence of a statutory proscription, there is nothing to prevent an amendment being made to a claim at the claimant's request*

[5] The Applicant says that his earlier complaint was simply amended and should not have been rejected as out of time, but considered on its merits. Accordingly, as in *Arnold v. Canadian Human Rights Commission* (1996), 119 F.T.R. 241 the Applicant argues, there is a duty to accommodate the disabled and the matter should be sent back for redetermination.

[6] The Applicant's argument is flawed as it overlooks the fact that his original complaint was dismissed, on its merits, as set out in the Commission's letter July 5, 2004. At that point the matter was over.

[7] The Applicant sought out the Court Challenges Program to see if a different avenue was available, it was not. In April 2005 the Applicant made inquiry of the Commission as to whether an avenue of appeal was available, there was not. In May 2005 the Applicant filed another complaint, which he called a revised complaint, providing other information beyond that set out in his original complaint but based on the same event. This additional material comprised essentially of statistics as to job losses suffered by the hearing disabled. The Commission accepted this material for filing but cautioned him that it would be subject to scrutiny and rejection if it was determined that there was no basis for an extension of time.

[8] The Commission afforded the Applicant ample opportunity to make submissions as to why an extension of time should be granted. He made those submissions and, after receiving them, the Commission refused to grant the extension. Thus the matter that was already decided against the Applicant more than one year previous, was not further considered on the basis that the "revision" or "new matter" was out of time.

[9] The Commission, in making decisions of this kind is entitled to considerable deference by the Court. As stated by Justice Snider in *Johnson v. Canada Mortgage and Housing Corp.* [2004] F.C.J. No. 1121, 2004 FC 918, a decision directly within the discretion of the Commission should only be disturbed if it is patently unreasonable. The Commission dismissed the Applicant's original



complaint. The Commission also dismissed the Applicant's request to supplement or revise the complaint as it was out of time. They did so after affording the Applicant an opportunity to make submissions which he did. It was not patently unreasonable to dismiss that "*revised*" complaint.

[10] While I have no doubt that the Applicant is well meaning in his attempts to seek redress in respect of which he perceives to be prejudice in respect of his hearing disabilities, those attempts have been misguided and haphazard. He does not appear to have received, or if received, followed, sound legal advice. Instead he has been guided to some extent by the well intentioned efforts of the Commission in leaning over backwards to assist him or at least suggest approaches to be considered. Matters however, must come to a resolution. The Applicant has been afforded two opportunities to make his case, the Commission has provided ample opportunity for the case to be made out and considered what the Applicant had to offer. The Commission's decisions were appropriate and cannot be set aside.

[11] While it would be in order to award costs to the Commission in this case, I do have some sympathy with the Applicant in his efforts, largely misguided, in pursuing what he perceived as his remedies. No costs will be ordered.



**JUDGMENT**

**UPON APPLICATION** made on Monday, the 15<sup>th</sup> day of May, 2006 for judicial review of a decision of the Canadian Human Rights Commission dated September 2, 2005;

**AND UPON** reviewing the Records filed herein and hearing from the Applicant in person, and from Counsel for the Respondent;

**AND FOR** the Reasons delivered herewith;

**THIS COURT ADJUDGES that:**

1. The application is dismissed; and
2. No order as to costs.

\_\_\_\_\_  
"Roger T. Hughes"  
Judge

Federal Court of Appeal



Cour d'appel fédérale

Date: 20070515

Docket: A-278-06

Citation: 2007 FCA 190

CORAM: SEXTON J.A.  
MALONE J.A.  
RYER J.A.

BETWEEN:

JOSHUA K. COHEN, B.A., M.A.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

**REASONS FOR JUDGMENT**

**MALONE J.A.**

[1] This is an appeal from a judgment of Hughes J., a Judge of the Federal Court (the Applications Judge), dated May 17, 2006 and reported at 2006 FC 608.

[2] The appellant had failed to secure a position under the Federal Management Training Program and filed a complaint with the Canadian Human Rights Commission (Commission) on March 25, 2004 (First Complaint) against the Public Service Commission of Canada (PSC).

[3] Mr. Cohen did not seek judicial review of the Commission's decision dated July 5, 2004, which dismissed this First Complaint on the basis that he had failed to establish a link to a prohibited ground of discrimination specific in the *Canadian Rights Act*, R.S.C. 1985 c. H-6 (the Act). Instead, Mr. Cohen filed a second complaint more than a year later.

[4] On September 2, 2005, the Commission dismissed the second complaint on the grounds that it was out of time and also refused to exercise its discretion to extend time.

[5] At the hearing of the judicial review application, Mr. Cohen argued that the second complaint was an amendment to the first complaint and should not have been rejected as being out of time. He also argued that in the event that the second complaint was a new complaint, the Commission should have granted an extension of time.

[6] The Applications Judge concluded that the first complaint was dismissed by the Commission on its merits, prior to his filing the second complaint. He also determined that the Commission's decision to not extend the one-year limit, which was discretionary in nature, was not patently unreasonable. Consequently, he dismissed the judicial review application.

[7] In my analysis, the Applications Judge committed no factual or legal errors that warrant the intervention on appeal, but one further issue requires comment: i.e. whether the Commission provided adequate reasons when it refused to extend the time for Mr. Cohen to file his second complaint.

[8] In its July 5, 2005 submissions, the PSC informed the Commission that the facts surrounding the second complaint did not lend itself to the exercise of discretion under paragraph 41(1)(e) of the Act and that it should not extend the time limit beyond the one-year time limit. The PSC indicated that an extension of time would be highly prejudicial in the context where staffing decisions had been made and positions had been filed. The final decision that was issued by the Commission on September 2, 2005, (Exhibit 36), incorporates the investigator's letter (Exhibit 28) and the submissions of the PSC, dated July 5, 2005, (Exhibit 8). The letter reads as follows:

Before rendering its decision, the Commission reviewed the analysis and the recommendation contained in the letter sent to you previously, and any submission(s) filed in response to the letter.

[9] The Commission is permitted to incorporate by reference either an investigator's reports/letters or the submissions of parties, all of which can form part of its reasons (see *Canada (AG) v. Sketchley*, [2006] 3 F.C. 392; *Gardner v. Canada*, 2005 FCA 284). Here, the PSC submission of July 5, 2005 provides adequate reasons as to why the Commission should not exercise its discretion and extend time and was incorporated by reference by the Commission in its decision of September 2, 2005. Accordingly, the rules of natural justice have not been breached and the requirements of subsection 42(1) of the Act have been satisfied.

[10] The appeal should be dismissed without costs.

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"B. Malone"

J.A.

"I agree.

J. Edgar Sexton J.A."

"I agree.

C. Michael Ryer J.A."



## APPLICANT'S MEMORANDUM OF ARGUMENT

### PART I – STATEMENT OF FACTS

#### **Overview**

- 1) The applicant, J.C., who is hearing impaired ("H.I.") and ADHD, failed to secure a training position under the Federal Management Training Program ("MTP"), due to discriminatory concerns. He then filed a one and only Complaint Form, #20040226, on March 24<sup>th</sup>, 2004, with the Canadian Human Rights Commission ("CHRC")<sup>1</sup>. Unknown at the time by J.C., CHRC withheld their official Complaint Summary of April 6<sup>th</sup>, 2004<sup>2</sup> and a CHRC log that mediation was to occur on April 15<sup>th</sup>, 2004<sup>3</sup> which J.C. later learned, via documents received via Access to Info. ("ATI"). In the latter Complaint Summary links of disability discriminations were made by CHRC related to sec. 7 & 10 of the *Canadian Human Rights Act* ("CHRA"), concerning "*differential treatment and refusal to hire.*"
- 2) Being told in a July 5<sup>th</sup>, 2004 letter<sup>4</sup> to access Court Challenges of Canada ("CCC"), not a judicial review, J.C. received a reply months later confirming he had a "*basis for a strong individualized human rights complaint*"<sup>5</sup> and, thus, the jurisdiction of CHRC.
- 3) File #20040226 was officially re-opened by CHRC on May 3<sup>rd</sup>, 2005 on the basis of, "*if he (J.C.) still wished to file the complaint that we would take it ....*"<sup>6</sup> Further, related to amends/revisions: "*... he could use (Employment Equity) stats to support his complaint (that of #20040226).*" On May 4<sup>th</sup> 2005, J.C. re-submitted file #20040226 and it was accepted<sup>7</sup>. Again, a CHRC Complaint Summary of May 9<sup>th</sup>, 2005, which J.C. received this time, confirmed what the above April 6<sup>th</sup>, 2004 Complaint Summary said all along with an added "*discriminatory Police (sic) and Practice*"<sup>8</sup>. However, a Sept. 2<sup>nd</sup>, 2005 CHRC letter says file #20040226 is now out of time<sup>9</sup>.
- 4) Thus, the main issue before this Court concerns whether the 2<sup>nd</sup> re-submission of file #20040226, as it was headlined to CHRC (see top of document 7, p.40) really stands as a "new complaint" and/or not, since the file # remained

<sup>1</sup> Document 1, page 32 to this Application for Leave to Appeal.

<sup>2</sup> Document 2, page 33 to this Application for Leave to Appeal.

<sup>3</sup> Document 3, page 34 to this Application for Leave to Appeal.

<sup>4</sup> Document 4, pp.35 - 36 to this Application for Leave to Appeal.

<sup>5</sup> Document 5, pp.37 - 38 to this Application for Leave to Appeal.

<sup>6</sup> Document 6, page 39 to this Application for Leave to Appeal.

<sup>7</sup> Document 7, page 40 to this Application for Leave to Appeal.

<sup>8</sup> Document 8, page 41 to this Application for Leave to Appeal.

<sup>9</sup> Document 9, page 42 to this Application for Leave to Appeal.



unchanged throughout; and thus would it then be beyond the scope of a one-year time-limit, according to sec. 41 (1) (e) of the CHRA?

### The Trial Decision

- 5) At trial, Hughes, R., misconstrues the facts saying, "*the Applicant says his submissions of May 9, 2005 was simply a revision of his application filed April 6, 2004*<sup>10</sup>." In fact, these latter are really CHRC's Complaint Summaries, as detailed above.
- 6) It is opportune to clarify that J.C. tried to submit new evidence he received from ATI at the Public Service Commission and also wanted a one-on-one meeting to discuss his case, due to his hearing impairment by means of accessibility, via the *duty to accommodate* the disabled without undue hardship. However, these calls by him and his lawyer were ignored and the buck was passed to Madame Lalonde who simply closed J.C.'s file on July 5<sup>th</sup>, 2004 (see doc. 4, pp 35-36). The memorandum of Jessie Joseph at CHRC confirms the above occurred<sup>11</sup>.
- 7) Connected to the above, not only was there a lack of a *duty to accommodate* a disabled person, but also a deficiency re: a *duty to examine new evidence*. Thus, the learned judge is correct in using J.C.'s jurisprudence of *Tiwana v. CHRC* (2001) with *Bell Canada v. Communication ...Energy* (1999), confirming complaints can be amended.<sup>12</sup>

*"And it becomes her (the investigator's) duty to examine that (new) evidence ...and even suggest that the complaint be amended. To require the investigator in such a case to recommend the dismissal of the complaint for being flawed and to force the filing of a new complaint ...would serve no practical purpose. It would be tantamount to importing into human rights legislation the type of procedural barriers that the Supreme Court of Canada has urged not to be imported."*
- 8) Furthermore, justice Hughes asserts, "*his original complaint was dismissed, on its merits, as set out in the Commission's letter of July 5, 2004. At that point the matter was over*<sup>13</sup>." Considering what happened above (i.e., the held CHRC Complaint Summary of April 6<sup>th</sup>, 2004 establishing discriminatory links and lack of the *duty to accommodate* and *duty to examine new evidence*), there was the recommendation to access CCC (not a judicial review). This latter institution replied months later that J.C. did, in fact, have "*a strong*

<sup>10</sup> Trial decision at para. 4 page 10 to this Application for Leave to Appeal.

<sup>11</sup> Document 10, pp.43 – 44 to this Application for Leave to Appeal.

<sup>12</sup> Trial decision at para. 4 page 10 to this Application for Leave to Appeal.

<sup>13</sup> Trial decision at para. 6 page 11 to this Application for Leave to Appeal.

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- 8) Furthermore, justice Hughes asserts, "*his original complaint was dismissed, on its merits, as set out in the Commission's letter of July 5, 2004. At that point the matter was over*".<sup>13</sup> Considering what happened above (i.e., the held CHRC Complaint Summary of April 6<sup>th</sup>, 2004 establishing discriminatory links and lack of the *duty to accommodate* and *duty to examine new evidence*), there was the recommendation to access CCC (not a judicial review). This latter institution replied months later that J.C. did, in fact, have "*a strong*

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<sup>12</sup> Trial decision at para. 4 page 10 to this Application for Leave to Appeal.

<sup>13</sup> Trial decision at para. 6 page 11 to this Application for Leave to Appeal.

*individualized human rights case*" which would then be the jurisdiction of CHRC, as was explained above, thus the matter was still not over.

### **The Decision of the Court of Appeal**

- 9) The principal issues remained the same before the Federal Court of Appeal, whether J.C.'s file #20040226 was re-opened or if he filed a "fresh (new) complaint" with other matters surrounding that.
- 10) Again, the Federal Court of Appeal upheld that there were two complaints, as noted in paragraphs 3-6 above, herein, despite one file # 20040226 throughout, and that a one and only CHRC official Complaint Form filled out on March 24<sup>th</sup>, 2004 (see Doc. 1, *ibid*). Further, this same complaint file #20040226 was re-submitted May 4<sup>th</sup>, 2005 to the CHRC and it was accepted for re-visitation and thus the right of judicial review. Even in CHRC's H. Rizk's Memorandum- to-file, she documented file #20040226 on May 3<sup>rd</sup>, 2005 (see Doc. 6, p. 39) and logically said in reference to the said file, "*if he (J.C.) still wished to file the complaint that we would take it....*" There is no other formal complaint form filled out, other than March 24<sup>th</sup>, 2004, when the file #20040226 was allocated to the Applicant. And J.C. filed it responsibly way before the expiry of the one-year period.
- 11) During the Appeal<sup>14</sup> there is a reference relating to a July 5<sup>th</sup>, 2005 Public Service Commission ("PSC") that "*the PSC indicated that an extension of time would be highly prejudicial in the context where staffing decisions had been made and positions had been filled.*" (See Doc. 17, p. 53). The facts are that the MTP is a training program lasting up to four years and management pools are recruited yearly since its inception in 1991<sup>15</sup>. Thus, yearly, there is room enough for one to be added, especially a capable disabled. Furthermore, the stats confirm an under-representation of H.I. people in the MTP, considering the fact that almost 25% (1 in 4) Canadians has some form of H.I.<sup>16</sup>.
- 12) Moreover, "*whether the Commission provided adequate reasons when it refused to extend the time for Mr. Cohen to file his second complaint*<sup>17</sup>." The Applicant primarily argued, not for an extension of time, but rather that the re-submitted "2<sup>nd</sup> Complaint" is and was going back to the first complaint, whereby the one and only file #20040226 corroborates this on-time fact. This

<sup>14</sup> Appeal Trial Decision at para. 8, page 11 to this Application for Leave to Appeal.

<sup>15</sup> Document 11, page 45 to this Application for Leave to Appeal.

<sup>16</sup> Document 12, page 46 to this Application for Leave to Appeal.

<sup>17</sup> Appeal Trial Decision at para. 7 page 15 to this Application for Leave to Appeal.



part of the Appeal Decision is correct: "...Mr. Cohen argued that the second complaint was *an amendment* to the first complaint and should not have been rejected as being out of time<sup>18</sup>. This was also officially notated by CHRC relating to the Applicant's file #20040226 in their use of the word "revised," which is synonymous with "amend": "*we (CHRC) received the revised complaint wherein you established a link to a ground*"<sup>19</sup>." Thus, such an application of sec. 41 (1) (e) of the CHRA serves no justification and is tantamount to a procedural irregularity and barrier, as was mention in justice Hughes use of J.C.'s jurisprudence in this Application ... at para. 7 above.

## PART II – STATEMENT OF QUESTIONS IN ISSUE

- 13) It is open for this Court, via the *Standard of Correctness*, which is the highest for judicial review, and to substitute its opinions of lower Courts and Tribunal decisions. This Court has a greater expertise and power related, also, to its own "stare decisis" on issues related to human rights.
- 14) The primary question in issue to be determined by this Court is whether the re-submitted Complaint #20040226 on May 4<sup>th</sup>, 2005 is a "New Complaint" and/or is it, in fact, referring back to the one and only Complaint Form filed as #20040226 on March 24<sup>th</sup>, 2004, and thus is it correctly filed within the one-year period? Also, as related to CHRC's Complaint Summaries of April 6<sup>th</sup>, 2004 (which was withheld) and the other of May 9<sup>th</sup>, 2005, do they confirm merit with their findings of initial links to discrimination on relevant sec. 7 & 10 of the CHRA?
- 15) Secondly, were there any breaches of natural justice, procedural fairness and/or good faith related to Complaint #20040226? Such secondary, yet important, issues are:
  - a) *the duty of accommodation* of the disabled without undue hardship by
  - b) *duty to examine* new evidence before July 5<sup>th</sup>, 2004 closure
  - c) *to differentiate adversely* and thus *deprive of (equal) opportunity* employment and *discriminatory policy or practice* as confirmed
  - d) *duty to proceed* with file #20040226
  - e) *duty to disclose* the April 6<sup>th</sup>, 2004 Complaint Summary
  - f) *duty to act fairly*
  - g) *adequate reasons* for closure of file #20040226

<sup>18</sup> Appeal Trial Decision at para. 5 page to this Application for Leave to Appeal.

<sup>19</sup> Document 13, page 47 to this Application for Leave to Appeal.

### PART III – STATEMENT OF ARGUMENT

#### Governing Judicial Review Standard

It is open for this Court, via the *Standard of Correctness*, which is the highest for judicial review, and to substitute its opinions of lower Courts and Tribunal decisions. This Court has a greater expertise and power related, also, to its own “stare decisis” on issues related to human rights.

- 16) The standard of review was *patent unreasonable(ness)*<sup>20</sup>. The Applicant seeks recourse from this Court, via the *Standard of Correctness*. According to a *dictionary of Canadian Law* it states<sup>21</sup>:

*“CORRECTNESS. n. 1. The highest standard of judicial review of tribunals’ decisions. ...where there is a statutory right of appeal which allows the reviewing court to substitute its opinion for that of the tribunal (and/or lower court) and where the tribunal (and/or lower court) has no greater expertise than the (higher) court on the issue in question, for example in the area of human rights.”*

- 17) In the favourable Supreme Court case of the honourable Cosgrove<sup>22</sup> the test question of assessments of the totality of circumstances was: “*what would an informed person, viewing the matter realistically, and practically – and have thought the matter through – conclude ...*” would also apply to this Applicant’s case.

The primary question in issue to be determined by this Court is whether the re-submitted Complaint #20040226 on May 4<sup>th</sup>, 2005 is a “New Complaint” and/or is it, in fact, referring back to the one and only Complaint Form filed #20040226 on March 24<sup>th</sup>, 2004, and thus correctly filed within the one-year period? Also as related to CHRC’s Complaint Summaries of April 6<sup>th</sup>, 2004 (which was withheld) and the other of May 9<sup>th</sup>, 2005 do they confirm merit with their findings of initial links to discrimination on relevant sec. 7 & 10 of the *CHRA*?

- 18) While justice Hughes did use the Applicant’s jurisprudence of *Tiwana v. CHRC* (see footnote 12) more could have been said relating to the Complaint submissions. In the latter case law, justice Pelletier (as he once was) states:

*“[27] He (Tiwana) did what any layman (and many lawyers) would do. He attempts to neutralize the limitation argument by saying the complaint*

<sup>20</sup> Trial and Appeal Decision at para. 9 and at para. 6, pp. 11 & 16, to this Application ...

<sup>21</sup> Dukelow, Daphe, *Dictionary of Canadian Law Third Edition*. Carswell: Toronto, 2002 p. 104.

<sup>22</sup> *Mr Justice Paul Cosgrove v. AGC* [2006] 1 F.C.R., at p. 189.



*goes back to his original letter and so there is no issue of (time-barred) limitation ....*” Further in this case at par [7]: “*Not surprisingly, Mr. Tiwana did not submit a fresh (new) complaint. Instead he renewed his efforts to have his complaint amended (revised).*” This was also officially notated by CHRC relating to the Applicant’s file #20040226 in their use of the word “revised” as is synonymous with “amend”: “*we (CHRC) received the revised complaint wherein you established a link to a ground*” (See Doc. 13, p. 47). This also corroborates the merit of the Applicant’s case.

Secondarily, were there any breaches of natural justice, procedural fairness and/or good faith related to Complaint #20040226? Such secondary, yet important, issues are:

- a) *the duty of accommodation* of the disabled without undue hardship by
- b) *duty to examine* new evidence before July 5<sup>th</sup>, 2004 closure
- c) *to differentiate adversely and thus deprive of (equal) opportunity employment and discriminatory policy or practice as confirmed*
- d) *duty to proceed* with file #20040226
- e) *duty to disclose* the April 6<sup>th</sup>, 2004 Complaint Summary
- f) *duty to act fairly*
- g) *adequate reasons* for closure of file #20040226

- 19) Re: (a) above, Further to what was already mentioned, in para. 6 above, related to the *duty to accommodate* the disabled without undue hardship. Sec. 5/5 (a) of the CHRA states: “*It is a discriminatory practice in the provision of ...services ...(a) to deny, or to deny access to any such ... service ...on a prohibited ground of discrimination.*” CHRC knew that J.C. was H.I., yet calls by him and his lawyer were ignored (and thus directly and/or indirectly services denied) before CHRC closed the file on July 5<sup>th</sup>, 2004, as confirmed above in para. 7, herein.

Moreover, a Supreme Court Ruling confirms that “*the CHRA applies to all employees of the federal gov’t, including those working for parliament*”<sup>23</sup>. Should this not be inclusive of CHRC staff, as well, without any “discretionary privileges,” which the above case dealt with also?

In addition, **individualized vs. generalized testing** is an issue related to the *duty to accommodate*. Between Oct. 2003 til Jan. 14<sup>th</sup>, 2004, J.C. went through a battery of exams. Rather than a focus on work performance per say, psychological (mental) standards were employed measuring “Cognitive (mind) Capacity” and “Communication (Speech)”<sup>24</sup>. Individualized testing, via the *duty to accommodate*, would have better demonstrated the Applicant’s

<sup>23</sup> Canada (House of Commons) v. Vaid [2005] 1 S.C.R. p. 670.  
<sup>24</sup> Document 14, page 48 to this Application for Leave to Appeal.

skills "focusing on his real merits capacities and needs with due respect for dignity and worth as a human being." Further, J.C., as a gov't non-employee had to have a M.A. to enter the MTP competition vs. those as gov't employees needing only a B.A.<sup>25</sup> Also, the Applicant's bilingual skills did not count, despite the bilingual management position posted. Much "stare decisis," supports the above. In a Cdn Law Dictionary it states, with all its jurisprudence:

*"Employers and others governed by human rights legislation are now required in all cases to accommodate the characteristics of affected groups within their standards.... Incorporating accommodation into the standard ensures that each person is assessed according to her or his own personal abilities ..."*<sup>26</sup>

- 20) Re: (b) justice Hughes appropriately appealed to J.C.'s jurisprudence of *Tiwana v. CHRC* relating to the *duty to examine* new evidence, yet by-passed the Applicant on this significant point, confirming complaints can also be amended and/or revised (see footnote 12) yet bypassed J.C. re: this significant point. This, especially, since the Applicant (and his lawyer) tried to call for a personalized appt and to ATI info. but without success (see also para. 6-7, herein). And, especially note, "*dismissal of the complaint*," (para. 8) in which file #20040226 was on July 5<sup>th</sup>, 2004, then re-opened on May 3<sup>rd</sup>, 2005 (see also para. 2-3).

*"and it becomes her (the investigator's) duty to examine that (new) evidence ...and even suggest that the complaint be amended. To require the investigator in such a case to recommend the dismissal of the complaint for being flawed and to force the filing of a new complaint ...would serve no practical purpose. It would be tantamount to importing into human rights legislation the type of procedural barriers that the Supreme Court of Canada has urged not to be imported."*

- 21) Re: (c), the CHRC is a "master of their own discretions" and thus via two CHRC Complaint Summaries (April 6<sup>th</sup>, 2004 and May 9<sup>th</sup>, 2005), they confirmed links sec. 7 and 10 of the *CHRA* related to, as said, "*refusal to hire and differential treatment*" as well as a 2005 addition, "*discriminatory police (sic) or practice*." Further, a CHRC log confirmed that mediation was to take place on April 15<sup>th</sup>, 2004 (see para. 1 above). Thus, this is a concrete concerted justification for the *duty to proceed*.

<sup>25</sup> Document 15, page 49 to this Application for Leave to Appeal.

<sup>26</sup> Dukelow, Ibid, p. 142.

- 22) Re: (d) the *duty to proceed*, without an unjust application of s. 41 (1) (e), related to (c) above, a Supreme Court ruling<sup>27</sup> asserts:

*"While the Act (CHRA) contains no express requirement of a hearing prior to the dismissal of a claim under ...sec.40 (and) 41, are consistent with the imposition of a duty to proceed on a quasi-judicial basis. The existence of such a duty finds ample support in the case law."*

- 23) Re: (e) the Applicant received a CHRC Complaint Summary dated May 9<sup>th</sup>, 2005, confirming links to discrimination. However, J.C. did not receive the April 6<sup>th</sup>, 2004 CHRC Complaint Summary verifying two of the three links of discrimination as the May 9<sup>th</sup>, 2005 one. Thus, CHRC failed in the *duty to disclose* the first complaint, and it was obtained difficultly by ATI at CHRC, later. In the above Supreme Court ruling (see footnote 27) and here at pp. 882-883 it confirms:

*"The Commission (CHRC) is accordingly under a duty to disclose to the parties at the proper time not only the factual basis of its decision, but also the legal basis of its investigation .... The parties must also be allowed to make an informed response to the Commission interpretation and to urge upon it their own interpretation of the law ...."*

Not only did CHRC fail to disclose the 1<sup>st</sup> Complaint Summary, but also a PSC letter of July 21<sup>st</sup>, 2005. This was also obtained via ATI. The allegations, herein, related to PSC ATI process timing was later proved false<sup>28</sup>. A Supreme Court "stare decisis" asserts and related also to the *duty to act fairly*<sup>29</sup>:

*"If a person may be subjected to ... proceedings, or deprived of remedies or redress or in some such way adversely affected by the investigation and report then he should be told the case made against him and be afforded a fair opportunity of answering it."*

- 24) Re: (f) the *duty to act fairly*, the immediate jurisprudence above applies. In addition, consideration of any breach of the requirements of natural justice, procedural fairness and good faith is applicable in the review of the "totality of the circumstances" related also to the *duty to act fairly* re: file #20040226. Further, the Applicant references the case law below of *Tiedeman vs. CHRC* (1993) at [11] in para. 25 below. Also, *Herbert v. Canada (CHRC)* confirms

<sup>27</sup> *S.E.P.Q.A. v. CHRC* 2 S.C.R. p. 882.

<sup>28</sup> Document 16, pp 50 - 51 to this Application for Leave to Appeal.

<sup>29</sup> *Selverajan v. Relations Board* --- (1976)



that: "*jurisprudence establish(es) that even in the most basic administrative decisions, the requirements of fairness prevailed*<sup>30</sup>."

In the "totality of the circumstances," related to file #20040226, the voice of the honourable Dickson, J. (as he once was) still echoes in the chambers of justice (Dukelow, p. 142):

*"The basic objective of the duty to act fairly is to ensure that an individual is provided with a sufficient degree of participation necessary to bring to the attention of the decision-maker any fact or argument of which a fair-minded decision-maker any fact or argument of which a fair-minded decision-maker would need to be informed in order to reach a rational (syn: reasonable) conclusion (syn: final decision)."*

- 25) Re (g), justice Malone J.A. relates "*whether the Commission provided adequate reasons when it refused to extend the time for Mr. Cohen to file his second complaint*<sup>31</sup>." The Applicant primarily argued, not so much for an extension of time, but rather that the re-submitted "2<sup>nd</sup> Complaint" is and was going back to the first complaint, whereby the one and only Complaint Form of Mar. 24<sup>th</sup>, 2004 given file #20040226 corroborates an on-time fact (see also para. 1, herein).

Moreover, this part of the Appeal decision is correct: "*...Mr. Cohen argued that the second complaint was an amendment to the first complaint and should not have been rejected as being out of time*<sup>32</sup>." This was also officially notated by CHRC relating to the Applicant's file #20040226 in their use of the word "revised," which is synonymous with "amend," in document 13: "*we (CHRC) received the revised (amended) complaint wherein you established a link to a ground (of discrimination).*" Consequently, a time-barred application of sec. 41 (1) (e) of the CHRA serves no justification and is tantamount to a **procedural irregularity and barrier**, as was mention in justice Hughes use of J.C.'s jurisprudence re: *Tiwana v. CHRC* [2001] in this Application at para. 7, and repeated here for convenience:

*"and it becomes her (the investigator's) duty to examine that (new) evidence ...and even suggest that the complaint be amended. To require the investigator in such a case to recommend the dismissal of the complaint for being flawed and to force the filing of a new complaint ...would serve no practical purpose. It would be tantamount to importing into human rights legislation the type of procedural barriers that the Supreme Court of Canada has urged not to be imported."*

<sup>30</sup> *Herbert v. Canada (CHRC)* (1996) 118 F.T.R. 97.

<sup>31</sup> Appeal Trial Decision at para. 7, page 15 to this Application for Leave to Appeal.

<sup>32</sup> Appeal Trial Decision at para. 5, page 15 to this Application for Leave to Appeal.

Also, one of the PSC's defense jurisprudence of July 5, 2005<sup>33</sup> was *Tiedeman v. CHRC* (1993) (*Doc. 17p.53*), implying that "**dates are determinative**" [referring to *CHRA* s. 41 (1) (e) time-limits]. Under closer scrutiny, this case actually substantiated the Applicant's case that, in fact, dates are not necessarily determinative. Breaches of natural justice, procedural fairness and good faith can override s. 41.1 (e). For instance, justice McGillis in the *Tiedeman* dossier overruled CHRC's application of s. 41 (1) (e) stating:

*"[10] Although I am loathe to interfere with the statutory exercise of discretion by the Commission (CHRC), the facts of this case warrant, without question, the intervention of the court.*

*"[11] In rejecting the complaint of discrimination on the basis of noncompliance with the statutory time limit [s. 41 (e)], the Commission failed to consider the submissions .... The Commission breached a basic of procedural fairness and acted unfairly .... And, subsequently, to fail to consider them renders hollow the hallowed principle of the right to be heard ("Audi Alteram Partem"). The Commission therefore erred in law in exercising its discretion under s. 41 (1) (e) of the Act ....*

*"[13] In view of my conclusion that the Commission erred in law in the exercise of its discretion, it is unnecessary to consider the alternative argument concerning the calculation of the expiry date of the limitation period."*

As one has hopefully seen in all the above, the Applicant firmly believes his "voice of adequate reasons" throughout has still not been heard .... Such examples of breaches, either of natural justice, procedural fairness and/or good faith, and not limited to, includes lack of *duty to: (a) accommodate, (b) examine (new) evidence, (c) to disclose (d) to proceed and (e) to act fairly*. Moreover, unwritten principles supporting human rights are possibly applicable as deferred to this Court's expertise.

And certainly applicable is the test question by justice Cosgrove: "*What would an informed person, viewing the matter realistically, and practically – and have thought the matter through – conclude ...?*"

<sup>33</sup>

Document 17, pp. 52 - 53 to this Application for Leave to Appeal.




**PART IV – STATEMENT OF ORDER SOUGHT AS TO COSTS**

- 26) The Applicant respectfully request that costs of the present Application follow the cause should this Court grant leave to Appeal, and that each party bear its own costs should the present Application be denied.

**PART V – ORDER SOUGHT**

- 27) The Applicant respectfully requests that leave be granted to appeal to this Court the judgment of the Federal Court of Appeal in matter A-278-06 rendered on May 15<sup>th</sup>, 2007.

The whole respectfully submitted this 14<sup>th</sup> day of August, 2007

  
\_\_\_\_\_  
Joshua Cohen, B.A., M.A.  
Self-Representative for Applicant

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**PART VII – PROVISIONS OF STATUTES AND REGULATIONS**

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# COMPLAINT FORM

File: 20040226

YOUR NAME

NAME OF ORGANIZATION OR INDIVIDUAL  
YOUR COMPLAINT IS AGAINST

Joshua Cohen

Public Service Commission

I have reasonable grounds for believing that I have been discriminated against

- ☒ in employment  
☐ in the provision of services

4.8  
also 4.2 / 4.12  
4.3 4.4  
4.3.1

contrary to section 7 and 10 of the *Canadian Human Rights Act*.

I declare that the following information is true to the best of my knowledge.

The facts of my complaint are as follows:

(see 3 page typed form)

I HEREBY CERTIFY that this document is a true copy of the original  
JE CERTIFIE QUE LE PRÉSENT document est une copie conforme

Rule 318 certificate

dated October 31, 2005

date le

Andrea Parsons

Signature

Oct 31/05

Dated

worn before me in Ottawa, Ontario on the

\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Commissioner of oaths for the Federal Court  
of Canada

CANADIAN  
HUMAN RIGHTS  
COMMISSIONCOMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

## SUMMARY OF COMPLAINT

FILE NUMBER

20040226

DATE COMPLAINT RECEIVED

April 6, 2004

NAME OF COMPLAINANT

Joshua Cohen

NAME AND ADDRESS OF RESPONDENT

Public Service Commission  
Ottawa, Ontario  
K01 0M7

DATE OF ALLEGED CONDUCT

From January 2004  
to February 2004

ADDRESS WHERE INCIDENT OCCURRED (if different from above)

same

RELEVANT PROHIBITED GROUNDS

Disability (Culturally deaf and Attention deficit and  
hyperactivity disorder)

APPLICABLE SECTIONS OF THE CHRA

07 and 10

PRACTICES (e.g., termination of employment, harassment, etc.)

1. Differential Treatment
2. Refusal to Hire

FEDERAL COURT  
COUR FÉDÉRALE

MAY 15 2006





File: 20040226  
Dossier:



CANADIAN HUMAN RIGHTS COMMISSION      COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

**Subject: ANTI-DISCRIMINATION PROGRAMS**  
**Sujet: COMPLAINTS, INQUIRIES AND INVESTIGATIONS**  
**COHEN JOSHUA VS PUBLIC SERVICE COMMISSION OF CANADA**



# LOSED



2005  
OSSIEN

Date	Referred to / Remo's	Remarks / Remarques	FA Date	Case Class	INITIALS	Date
MAR 25 2006	Rene Joseph	Lacmil				
Eblunay	Sue St-Clair	P/S writing + Medication			NJ	
January	S. Best	Please review / Surg			HR	
10/05/05	Hennyra	No Required			ZJ	
30/6/04	Suzanne H-C.	p/s. send let.r. to C. then			NL	
July 19/04	S. St-C.	p/s. PA. closed in one			AK	
28 June 05	Begutrie	CLOSED. P/s. PA			SD	
APR 25 2006	hand Thompson	RFB			SR	
APR 26/05	S. Best	request to re-open file			LT	
10 May 05	S. Best	pld reasons			HR	
16/05/05	M. Eagle	please prepare complaint			SB	
16/05/05	S. St-Clair	of for action			NLE	
24/05/05	SST CHAIR	please prepare for notification			SK	
15 Jun 05	A.Pist	Disclosed Rpt			HR	
11 July 05	Gina Michael	pls x-disclosure to parties			SB	5 July 05
12 July 05	Michael Kachonery	please send			MK	OF 28 July
12 July	H.R.K.E.	x-disclosure sent.				July 28
Aug 22/05	michael	Plse add x-submission to the checklist + give Hennyra for signature ready for Commission			AS	
August 05	Femalie				IKM	

THE NEW COMPTON  
COHEN, JOSHUA VS PUBLIC  
SERVICE COMMISSION OF  
CANADA





CANADIAN  
HUMAN RIGHTS  
COMMISSION

Intake Services

COMMISSION  
CANADIENNE  
DROITS DE LA PERSONNE

Service de l'accueil

Doc. 4 p. 35

This is Exhibit "13" referred to as Exhibit "13"  
the affidavit of Joshua Cohen  
35

sworn before me in Ottawa, Ontario,  
on the 20th day of October JUL 8 5 2004

File: 20040226 Sylvie Roy  
Commissioner of oaths for the Registry Officer  
Federal Court of Canada Agente du greffe

**PROTECTED**

Mr. Joshua Cohen  
25 Pineglen Crescent  
Ottawa, Ontario K2E 6Y1

Dear Mr. Cohen:

tried to explain more via my lawyer  
who called several times between May + Ju  
- no one returned his calls.  
CON Human Rights says can be represented  
by a lawyer. Suddenly supe

or  
May 11th 04

This is further to your complaint form received on April 6, 2004, concerning the difficulties you have encountered with the Public Service Commission and following your conversation of May 10, 2004, with Ms. Joseph.

went on  
vacation  
til June  
2nd app  
(Tonya)

I have carefully reviewed your document and must advise you that the Canadian Human Rights Commission cannot offer you assistance in this matter. Under the *Canadian Human Rights Act*, the Commission investigates allegations of discrimination in employment and in provision of goods, services and accommodation in federal areas on a number of prohibited grounds specified in the *Act*.

In order for the Commission to accept a complaint, the alleged discriminatory act(s) must be directly linked to a prohibited ground. The *Act* is very specific and as such, does not extend to every situation where a person believes that he or she has been aggrieved. The *Act* stipulates that a complainant must show real and probable grounds for believing that a discriminatory act has taken place and in doing so, must also show grounds that a correlation exists between the discriminatory practice and a ground of discrimination.

In your letter you allege discrimination on the grounds of religion and disability. From the document you provided, there does not appear to be an established link to your religion and any alleged unfair treatment during your interview.

Furthermore, in your letter you allege being discriminated on the grounds of disability. If I understand you correctly, you allege that you were discriminated against during the Integrated Assessment Process offered by the Public Service Commission. You indicate that you were asked by the organization whether you needed accommodation for the assessment. You responded that you are hearing impaired but you would not require accommodation because you would be using your own new digital hearing aids. I understand that you had some adjustments to make to the hearing devices during the test period and that you did not realize at the time that you could have postponed the assessment. You state that you received the results from the assessment and you did not qualify for the position. However, you failed to mention how the organization discriminated against you prior to the assessment. In your complaint form, and from your telephone conversation with Ms. Joseph, it is unclear how you informed the organization of the communication difficulties you could have had with your devices during the test and how they refused to accommodate any request for accommodation in that regard. In the situation you describe, there does not appear to be a discriminatory

what  
about  
discr  
+ after

It is  
unclear as  
no one  
returned phone  
calls to my lawyer.



practice from the part of the organization to refuse you accommodation prior or during your test, because of disability.

In addition, you raise issues pertaining to unfair policies or practices for external candidates versus internal candidates, however, you make no link to a ground under the Act and how this alleged practice pertains to unfair treatment in this respect.

yes I did!

Lastly, you make reference to having been denied an appeal, however, you make no link to a ground under our Act and how this alleged discriminatory act pertains to unfair treatment.

I did

A person, such as yourself, may receive a treatment by an organization which he or she believes to be unfair. However, if the prohibited ground is not link to an alleged discriminatory practice, it would not constitute discrimination under our Act.

thanks for read in it's a human rep 152

In your letter, you also make reference to employment equity. For your information, the Canadian Human Rights Commission audits employers and takes necessary action to ensure they comply with the Employment Equity Act, which is designed to improve job opportunities for four specific grounds which are women, Aboriginal people, members of visible minorities, and persons with disabilities. Commission policy permits employers to collect the data they require to plan and support special programs, even though the information collected may touch upon one of the prohibited grounds.

Get audit - why exclusion order?

Furthermore, in your correspondence, you also refer to equality rights under the "Charter of Human Rights". You may want to address your concerns of fundamental rights under the Charter of Rights and Freedoms. This latter legislation is not within the Commission's jurisdiction. Matters related to the Charter are addressed through the courts. Anyone whose rights or freedoms, as guaranteed by the Charter, have been infringed or denied may apply to a court of jurisdiction to obtain such a remedy as the court considers appropriate and just in the circumstances. In order to obtain further information on the process, please contact the Court Challenges Program at the address listed below:

Court Challenges Program of Canada at:  
616 - 294 Portage Avenue  
Winnipeg, Manitoba R3C 0B9  
Phone: (204) 942-0022/Fax: (204) 946-0669  
Web: [www.ccpcej.ca](http://www.ccpcej.ca)/e-mail: [info@ccppej.ca](mailto:info@ccppej.ca)

I thank you for advising us of your concerns. Please note that your file is now closed. I regret that my response cannot be more positive.

Yours sincerely,

*N. Lalonde*

Nancy Lalonde  
Senior Complaints Analyst



Exhibit "16" 37

December 16, 2004

Mr Joshua K. Cohen  
25 Pineglen Crescent  
Ottawa Ontario K2E 6Y1

Dear Mr Cohen:

Re: Case Funding – Public Service Commission  
Our file number: E-1622

*an opinion ...  
not a judgement!  
weak legal arguments  
due to cost-prohibitive legal  
representation and lack thereof!*

This is Exhibit 16 "referred to in  
the affidavit of Joshua Cohen"  
sworn before me in Ottawa, Ontario,  
on the day of OCT 7 2005  
Sylvie Roy  
Commissioner of the Registry Officer  
Federal Court of Canada / greffe

I am writing in response to an application received in our office on October 7, 2004, in which you applied for Case funding from the Court Challenges Program with respect to the above-mentioned matter.

The Equality Rights Panel considered your application at its in-person meeting on November 11-12, 2004. After careful consideration, the Panel declined your application. The Panel's decision is set out in the following resolution:

**RESOLVED:**

*That neither Case Development nor Case Funding be granted to the applicant, Joshua Cohen, as the facts of his application do not reveal the potential to raise a strong substantive equality test case.*

The Court Challenges Program supports remedies that address systemic problems prevalent in the federal law and policies involving the one identified as it relates to people in the affected disadvantaged group in question. The Panel however, was not convinced that a viable case addressing a systemic policy existed on your facts alleging that the Public Service Commission ("PSC") discriminates against people with disabilities in a widespread and general manner

The Panel members were concerned about the viability of developing a case asserting that there is under-representation of people with hearing disabilities in the Management Trainee Program ("MTP") or that the PSC is systematically ignoring its own policy of not considering the special needs of people with hearing disabilities in the testing process, even though the latter may have occurred in your particular case. It was felt that on the basis of the facts as submitted, it would be very difficult to develop the convincing evidence required to prove these allegations.


*\* Stats given  
proof!...2 \*  
\* writing, as  
(email 3.  
handcapped)  
only!*

They also felt that a challenge to the exclusion order sheltering MTP recruitment decisions from PSC review was not a viable s. 15 equality case, as it would be very difficult to prove that this discriminates against people with disabilities directly or in an adverse effects-based manner. This exclusion order may be unfair, in a general sense, to all failed MTP candidates but there was no evidence that it singles out or has a specific adverse impact on people with disabilities. *it does as*

They felt that your case may have been the basis for a strong individualized human rights complaint, based on reasonable accommodation, addressing the manner in which the PSC failed to accommodate you with respect to your hearing aid difficulties. Unfortunately; however, the Program cannot provide funding to assist people with human rights complaints. *Exclusion order prevents application of employment equity clauses for "protected" minorities*

If you have any questions or comments, please do not hesitate to contact Ken Oh, the Legal Policy Analyst assigned to your file.

Yours truly,  
Court Challenges Program of Canada/  
Programme de contestation judiciaire du Canada

Per:   
Noël A. J. Badiou  
Executive Director



Doc 52, 39

This is Exhibit 33 referred to in  
the affidavit of Tasha Cohen  
sworn before me in Ottawa, Ont.  
on the 24th day of November, 2005

Commissioner

B. Labell  
Registry Officer  
Agent du greffier



CANADIAN  
HUMAN RIGHTS  
COMMISSION

COMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

**Memorandum to File  
Note au dossier**

---

**From/De:** Hannya Rizk  
**Date:** May 3, 2005  
**Subject/Objet:** 20040226 Cohen vs Public Service Commission

---

I called the complainant today to respond to his calls to the Chief Commissioner's office as well as his letter of April 25, 2005 wherein he requests an appeal.

I explained to Mr. Cohen that I had reviewed his file and that we had sent him a letter on July 5, 2004, stating the reasons we did not accept his complaint and that his file was closed. Mr. Cohen stated that he would like to appeal this decision. I explained that since we had not actually taken a complaint that there was no process of appeal, but that if he still wished to file the complaint that we would take it and that there would be a possibility that we would recommend to the Commission not to deal with it. I also explained that this decision would ultimately be up to the Commission and that he would have a chance to submit comments if he does not agree with the recommendation. I also advised him of the timeliness issue involved.

The complainant indicated that he would like to file the complaint and have the Commission decide whether or not to deal with it.

The complainant then explained that he had more information that he would like to add to his complaint. He said that very few if any persons who were deaf were screened in and that he received these statistics from an ATIP request. I explained that we could not base a complaint solely on Employment Equity Statistics.

After receiving clarification, I called the complainant back and advised him that although he could not base his complaint solely on EE statistics, he could use the information to support his complaint.

The complainant told me that he would be sending in his revised complaint. I asked him if he had the necessary information such as the kit to file the complaint. He said that he had since he had already written a complaint that is on file.



Doc. # 40

This is Exhibit "11" referred to in the affidavit of Joshua Cohen sworn before me in Ottawa, Ontario, on the 10th day of October 2005

To: Commissioners of CHRC

Re: Re-submission of File #20040226 on May 4, 2005

Sylvie Roy

Commissioner of Oaths for the Registry Officer  
Federal Court of Canada  
Agent du greffe

My name is Joshua K. Cohen (PSC reference # S133306/CHRC file #20040226) and since Oct/03, I have been involved in a battery of tests, which I passed all, in an open competition for a Federal Management Trainee Program (hereto MTP) position in Ottawa, ON. I was one of only three disabled (according to e-mails) in a pool of 150 candidates chosen, from thousands who competed from across Canada, to participate in a Psychological Assessment (known as the "Integrated Assessment Process" - hereto IAP). Unfortunately, I received a letter dated Feb. 06/04, which denied me entry in the MTP, saying my scores were not as superior as other candidates as per the IAP done on Jan. 14/04.

In order to enter the above open competition, I, as an external candidate, was required to have an M.A., while internal gov't candidates required only a B.A., (as, supposedly, their gov't experience made them equal in rank with an M.A.). It seems to the naked eye as unfair, as my external management experience was never considered and my M.A. was, in essence, "castrated" of its respect, dignity and power in the face of an internal candidate's B.A.

Also, "examples of hidden barriers are inflated or unnecessary educational prerequisites for a position ...tend(s) to screen out groups such as aboriginals (or the Deaf for that matter), (who have) less education" Grossman, Brian. Discrimination in Employment in Ontario: Canada Law Book Inc. Canada. 1994. p. 263).

The issue of preference/differential treatment still does not end here. My request for an appeal (within the PSC), for example, was DENIED TWICE, by Mme Papineau of the MTP in Ottawa, ON. (hereto MTP), and by Mme Bussiere, Coordinator of the Personnel Psychology Centre (hereto PPC and IAP, as mentioned above), by two E-mails in French, dated respectively: 02-18-04 and 02-19-04. Cited in French along these lines, stated that, "by decree (who's?), MTP and the PPC/IAP, were exempt from appeals (via an "Exclusion Order") and that the right of appeal was, in general, only to internal applicants...."

Now, re: participation in the IAP. Around Dec. 17<sup>th</sup>, Mme Bussiere called me to inquire of special needs. I did make here aware that I was hearing impaired and would be receiving digital hearing aids later and that I thought I would be O.K. I received my digital devices on Dec 23<sup>rd</sup>/03. I tried to get computer adjustments on Dec 24<sup>th</sup>/03, due to communication difficulties. Again around Jan 6 to the 8<sup>th</sup>/04, my hearing aids were digitally maxed to the limit. Then came the Jan 14<sup>th</sup>/04 test, during the trial period of my new hearing aids. My final adjustment period with my audiologist was Jan 28<sup>th</sup>/04 and told my aids were maxed to their limits. It was not till Feb 12<sup>th</sup>/04, during a telephone conversation with Mme Bussiere, that I knew the Jan 14/04 assessment could have been post-poned. By this time, however, it was too late.

Another issue re: the IAP, that made me feel uncomfortable, during the interview, were comments and questions made re: my religious masters degree. "This is the first M.A. degree of Religion, we've seen" "Can we ask you some questions re: this?" "Will this lead to ordination?" According to the Gov't of Ontario, in a booklet entitled: Working in Ontario: Ontario, 1993 p. 61, it states: "An employer or a job application form cannot ask you any questions about any of the prohibited grounds of discrimination."

What disappointed me the most, is the info garnished in the Privacy Act, where I had to sit and read the feed-backs of the observers. I could not photocopy any of the documents nor could I take notes. I was supervised like a kid by a federal employee (psychologist?) who was, seemingly, observing me and taking notes. Uncomfortably, I read the "secret" documents, where I noticed my grades changed during different table talk discussions, with grades going up and down. In addition, I noticed someone wrote along these lines, "he does not pronounce words correctly ...." What a blow to my dignity, especially since they knew I was hearing impaired. I have spent a lot of time in speech therapy when I was young and people tell me I speak very well! I have never been affronted like this before! It is equivalent to someone saying to a wheelchair bound or lame person, "you walk terribly!"

Communication testing is standard

Ottawa ON

Joshua Cohen

05/04/05

3/7/2

Doc 8 p. 41

Exhibit "15"



COMPLAINT SUMMARY

initial complaint  
(official CTRC complaint  
form was  
Feb. 26/04 No  
other was completed  
- according to  
Heldman's  
letter  
Revision  
was  
extension  
if you wish  
or this same  
file 20040226

FILE NUMBER

20040226

DATE COMPLAINT RECEIVED

May 9, 2005

NAME OF COMPLAINANT

Joshua K. COHEN

This is Exhibit "15" referred to in  
the affidavit of Joshua Cohen

sworn before me in Ottawa, Ontario,  
on the 7 day of OCT 2005

Sylvie Roy

Commissioner of Oaths Registry Officer  
Federal Court of Canada Agente du greffe

NAME AND ADDRESS OF RESPONDENT

DATE OF ALLEGED  
CONDUCT

Public Service Commission of Canada  
West Tower, L'Esplanade Laurier  
300 Laurier Avenue West  
Ottawa, ON K1A 0M7

January 14, 2004 to  
February 6, 2004

This is Exhibit "15" referred to in

ADDRESS WHERE INCIDENT OCCURRED (if different from above)

RELEVANT PROHIBITED GROUNDS

APPLICABLE SECTIONS OF THE CHRA

Disability

7, 10

PRACTICES (e.g., termination of employment, harassment, etc.)

Employment - Refusal to hire  
- Adverse Differential treatment  
- Discriminatory Policy or Practice





CANADIAN  
HUMAN RIGHTS  
COMMISSION

COMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

Executive Secretariat / Secrétariat exécutif

Exhibit "31"

SEP 02 2005

Mr. Joshua Cohen  
25 Pineglenn Crescent  
Ottawa, Ontario  
K2E 6Y1

This is Exhibit "36" referred to in  
the affidavit of Joshua Cohen  
sworn before me in Ottawa, Ontario,  
on the 14 day of November, 2005

This is Exhibit "31" referred to in  
the affidavit of Joshua Cohen  
sworn before me in Ottawa, Ontario,  
on the 07 day of OCT, 2005

Sylvie Roy  
Commissioner of oaths for the  
Federal Court of Canada  
Registry Officer  
Agent du greffe

Dear Mr. Cohen:

B. Labelle  
Commissioner of oaths  
Registry Officer  
Agent du greffe

I am writing to inform you of the decision taken by the Canadian Human Rights Commission in your complaint (20040226) against Public Service Commission of Canada.

Before rendering its decision, the Commission reviewed the analysis and the recommendation contained in the letter sent to you previously, and any submission(s) filed in response to the letter. After examining this information, the Commission decided, pursuant to paragraph 41(1)(e) of the *Canadian Human Rights Act*, not to deal with the complaint because:

- the complaint is based on acts which occurred more than one year before the filing of the complaint.

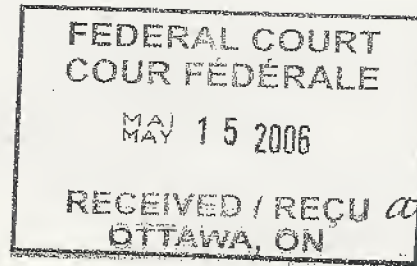
Accordingly, the file on this matter has now been closed.

Please note that, if you are not satisfied with the decision of the Commission, you can ask the Federal Court, Trial Division, to review the decision under subsection 18.1 of the *Federal Court Act*. If you decide to pursue this avenue, it is for you to contact the Court directly within 30 days of receipt of this letter. To enquire about the procedures, please contact the Federal Court office in Ottawa at (613) 992-4238.

Yours sincerely,

Lucie Veillette

Lucie Veillette  
Secretary to the Commission



CANADIAN  
HUMAN RIGHTS  
COMMISSION

COMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

**Memorandum to File  
Note au dossier**

**File : 20040226**

**From/De:** Kessie Joseph  
**Date:** June 21, 2004  
**Subject/Objet:** Joshua Cohen vs. Public Service Commission

Telephone message left in Hannya's voice mail from Mr. Cohen.

Mr. Cohen said that his lawyer, Mr. Steven Greenburg, has tried to contact Hannya, without any call back from her, or me (Kessie). Mr. Greenburg wanted to discuss legal issues concerning Mr. Cohen's file.

Mr. Cohen left his lawyer's telephone number: (613) 739-9988. He asked that we call his lawyer explain or confirm why we are not returning his lawyer's calls. Mr. Cohen also left his pager number : 364-1788.

- ▶ A letter will be sent to Mr. Cohen in response to his complaint.



Doc. 10 p. 44

1-1110-05

FEDERAL COURT  
COUR FÉDÉRALE  
MAY 15 2006  
RECEIVED / REÇU *at Hanna*  
OTTAWA, ON



CANADIAN  
HUMAN RIGHTS  
COMMISSION

COMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

Memorandum to File  
Note au dossier

File : 20040226

From/De: Kessie Joseph  
Date: June 29, 2004  
Subject/Objet: Joshua Cohen vs. Public Service Commission

Left a telephone message to Mr. Steven Greenburg's voice mail (Mr. Cohen's lawyer) in response to his calls.

**S. 26**  
**A. 26**

I inform Mr. Greenburg that Mrs. Hannya Rizk, who is assigned to Mr. Cohen's file, is presently on [redacted] I advised him that a letter will be sent to Mr. Cohen in response to his complaint form.

# MANAGEMENT TRAINEE PROGRAM (MTP)

## STATISTICAL DATA ON METIS AND/OR ABORIGINAL MANAGEMENT TRAINEES

This is Exhibit "18" referred to in the affidavit of Joshua Cohen sworn before me in Ottawa, Ontario, on the 7 day of OCT 2005

Trainees	External Component (Master's Degree)	Internal Component (Bachelor's Degree)
Metis and/or Aboriginals who were appointed to the Program (1991 to 2004)		
Total: 24 (11 Metis)	15 (7 Metis)	9 (4 Metis)
Metis and/or Aboriginals currently in the Program (as of March 17, 2004)		
Total: 6 (2 Metis)	4 (2 Metis)	2 (0 Metis)
MTP Matching Process 2003-2004 Still in progress		

Sylvie Roy  
Commissioner of the Federal Court of Canada  
Office of the Clerk of the Court

## STATISTICAL DATA ON DEAF OR HARD OF HEARING MANAGEMENT TRAINEES

Trainees	External Component (Master's Degree)	Internal Component (Bachelor's Degree)
Deaf or hard of hearing who were appointed to the Program (1991 to 2004)	2	3
Total: 5	2	3
Deaf or hard of hearing currently in the Program (as of March 17, 2004)	0	1
Total: 1	0	1
Deaf or hard of hearing currently on language training. If successful on language training will be appointed to the Program (as of March 17, 2004)	2	0
Total: 2	2	0
MTP Matching Process 2003-2004 Still in progress		

1991-2003

4 year program

This should be

only choice 2002 as post 1st deadline person is missing

- see P.4

(2002) - 2 not represented? Where is this one from?

goes back 4 years

one year limit language training from 2003 - still under 1 yr. French date limit M.A.S from

this year is included despite

1999-2003 1999-2004 1999-2000 to 2003-2004

one is missing?

Why is 1 B.A marked here. If this year doesn't count... Last B.A. marked here... 2004 clearly H.H. represented was in 1993?

asked for stats this year ... still in progress. Not available as per conversation w/ Danielle Golden in Mar/04

As of to date ... No Deaf / H.H. / M.A. representation since at least 1993! 10 years!! 0% - This is bad!





CANADIAN  
HUMAN RIGHTS  
COMMISSION

Investigations Branch

COMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

Direction des enquêtes

Doc. 13 p. 47 Exhibit "28"

47

*Si vous désirez obtenir une copie de cette lettre en français, veuillez communiquer avec la Commission à l'adresse ou au numéro de téléphone indiqués en bas de page.*

**PROTECTED SENT BY XPRESSPOST**

File no: 20040226

JUN 15 2005

Mr. Joshua Cohen  
25 Pineglen Crescent  
Ottawa, Ontario K2E 6Y1

This is Exhibit "28" referred to in  
the affidavit of Joshua Cohen  
sworn before me in Ottawa, Ontario,  
on the 7 day of OCT 7 2005, 20  
Sylvie Roy  
Commissioner of the Registry Officer  
Federal Court of Agent du greffe

Dear Mr. Cohen:

I am writing further to your complaint filed on May 9, 2005, against the Public Service Commission of Canada. Your complaint is based on alleged acts that took place from January 14, 2004 to February 6, 2004. You initially contacted the Commission on February 16, 2004 and submitted your first complaint form on March 25, 2004. You requested to add more information to your complaint form and sent in your revised complaint on April 6, 2004. On July 5, 2004, we advised you that your complaint did not appear to include a link to a ground under the *Canadian Human Rights Act (CHRA)*.

According to our file, the Commission received a letter on April 25, 2005, wherein you state your wish to pursue your complaint. On May 3, 2005, during a conversation with an officer at the Commission, you were advised that your initial complaint did not appear to show a link to a prohibited ground under the *CHRA*, as described to you in our letter of July 5, 2004. You then indicated that you would be adding more information to your initial complaint and re-submitting it. On May 9, 2005, we received the revised complaint wherein you established a link to a ground.

It is also noted that in a letter you sent on May 9, 2005, you explained that you and your lawyer had attempted to set up an appointment with the officer in charge of your file prior to receiving our letter of July 5, 2004. However, there is no record on file to indicate that you attempted to contact the Commission between July 5, 2004 and April 22, 2005.

Section 41(1)(e) of the *CHRA* states that the Commission may refuse to deal with a complaint where the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint. Your complaint will be presented to the Commission with a recommendation that, pursuant to section 41(1)(e) of the *CHRA*, the Commission not deal with the complaint given the length of time that has elapsed between the last date of alleged discrimination and the date the complaint was received. The complaint, the attached letter to Public Service Commission of Canada and this letter to you, as well as

.../2

Joshua Cohen

File Number: 18302

Date of Assessment: 2004-01-14

Your level of performance on each of the competencies was rated on the following 7-point scale:

Acceptable performance						
1	2	3	4	5	6	7
Greatly below	Below	Somewhat below	Meets Expectations	Somewhat Exceeds	Exceeds	Greatly Exceeds

Why was final note 4 out of 5 not considered?  
Why was based on this was not accommodation made?  
Why was my final assessment not considered?

### Your Assessment Results

This section of the report contains an overall description of your performance, as well as your ratings for each of the competencies assessed during the Integrated Assessment Process. For each competency, you were assigned a rating ranging from 1 to 7, using the scale described above. These ratings reflect the consensus of the assessment team and were achieved through in-depth discussion about your performance across all of the assessment exercises. In this section, you will find three parts, a) an assessment grid that illustrates your ratings at a glance, b) a written statement summarizing overall patterns of performance across competencies, and c) a competency-by-competency description that reflects typical performance associated with the ratings you received.

#### a) Your Ratings at a glance

	RATING SCALE						
	1	2	3	4	5	6	7
Cognitive Capacity			✓				
Action Management			✓				
Teamwork				✓			
Interpersonal Relations				✓			
Communication					✓		
Behavioural Flexibility					✓		

grades here are before training! Yet 4 out of 5 mid-high potential to succeed as final note if accepted!

This is Exhibit "A" referred to in the affidavit of Joshua Cohen sworn before me in Ottawa, Ontario, on the 30th day of October 2003.

IAP for MJP Commissioner of oaths for the Federal Court of Canada

Based on "hidden" document 1 set via Privacy Act. Graded in MJP minimum

$$5 \times 6 = 30$$

Why not 4 x 6 = 24 which is govt minimum standard? why was 4 out of 5 note not considered?



Yahoo! My Yahoo! Mail

YAHOO! Mail

Welcome, josnuaariel7  
[Sign Out, My Account]Search  
the web

Search

Mail-Home - Help

The  
**GPS**StoreGarmin, Magellan, Lowrance,  
Phillips, Delorme and more...

Mail - Addresses - Calendar - Notepad

josnuaariel7@yahoo.com [Sign Out]

Check Mail

Compose

Mail Upgrades - Search Mail - Mail Options

Folders [Add]

Previous | Next | Back to Messages

Printable View - Full H

Inbox (3)

Delete

Reply

Forward

Spam

Move to folder...

Draft

Sent

Bulk [Empty]

Trash [Empty]

Free Credit

Check

Instantly!

Be Paid to

Pay Your

Bills

Easy Faxing

For

Your Yahoo!

Mail

Rebuild

credit

with our

card!

This message is not flagged. [ Flag Message - Mark as Unread ]

Date: Wed, 17 Dec 2003 11:29:49 -0500

From: "MTP-PSG" &lt;mtp-psg@psc-cfp.gc.ca&gt;

To: Josnuaariel7@yahoo.com

Subject: [ ] Integrated Assessment Process Invitation

Dear Mr. Cohen:

Some time ago, you applied to the Management Trainee Program (MTP). The initial phase of the selection is now completed, and we are pleased to advise you that you have been selected for the subsequent phase, Integrated Assessment Process (IAP). This half-day process comprises simulation exercises.

As confirmed during our previous telephone conversation, your assessment will be held at the Personnel Psychology Centre, Assessment and Counselling Services, L'Esplanade Laurier Building 300 Laurier Avenue West, West Tower, M2 Level, Room M208 Ottawa, Ontario on January 14, 2004 beginning at 8:00 a.m. If you are unable to participate, please advise us upon receipt of the e-mail.

In order to obtain a brief description of the IAP and a definition of the competencies that will be assessed, click on this address:  
[http://www.psc-cfp.gc.ca/ppc/assessment\\_pg5\\_gg\\_e.htm](http://www.psc-cfp.gc.ca/ppc/assessment_pg5_gg_e.htm)

You are scheduled to be assessed in English. Should you prefer to be assessed in French, please advise us. In addition, should you have a disability which could affect your performance, please advise us as soon as possible. This is important, given that alternative arrangements may be required.

For your assessment you are required to bring the following document

- 1) Identification with photo/birth date (original and photocopy);
- 2) Proof of Canadian citizenship i.e. citizenship card, birth certificate, passport (original and photocopy);
- 3) Proof of educational requirement (original and photocopy);
  - a) EXTERNAL COMPONENT  
Proof of your Master's Degree Diploma (original and photocopy) \*  
OR current Master's Degree transcripts (original and photocopy)
  - b) INTERNAL COMPONENT  
Proof of your Bachelor's Degree Diploma (original and photocopy) \*

Non-govt must have M.A.  
govt only B.A.

.../ShowLetter?MsgId=1450\_452971\_8808\_883\_28211\_0\_553\_89867\_1079072403/12/31

This is Exhibit "10" referred to in the affidavit of Josnuaariel7 sworn before me in Ottawa, Ontario, on the 10th day of December, 2003.  
Sylvie Roy, 2003  
Registry Officer  
Federal Court of Canada

Doc 16 p. 50

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This is Exhibit "31" referred to in  
the affidavit of Joshua Cohen  
sworn before Oswald  
on the 14th day of November, 2005  
Paul Labelle  
Commissioner of oaths

**B. Labelle**  
Registry Officer  
Agent du greffe



Public Service Commission  
of Canada

President

Ottawa, Canada  
K1A 0M7

Commission de la fonction publique  
du Canada

Présidente

JUL 21 2005

Ms. Hannya Rizk  
Senior Complaints Analyst  
Canadian Human Rights Commission  
344 Slater Street  
Ottawa, Ontario K1A 1E1

Dear Ms. Rizk:

I am writing in response to a letter dated July 13, 2005, from Suzanne Best, Manager, Intake Services, Canadian Human Rights Commission (CHRC), and the enclosed Complainant's submission in the complaint of Joshua Cohen against the Public Service Commission (PSC).

There is only one allegation made in the Complainant's submission on which we would like to comment: Mr. Cohen alleges that the delay in submitting his complaint to the CHRC was due in part to Access to Information (ATI) delays encountered at the PSC. He claims that the ATI process far exceeded 30 days, although he acknowledges that President Barrados was able to accelerate the process. He further states that all ATI pertaining to his case was delayed until the end of April, 2004. In fact, Mr. Cohen's ATI request was received by the PSC on March 12, 2004, and was completed and released on April 12, 2004, within the 30-day time period. According to our records, all calls were returned within one day, most on the same day. The PSC submits that the 30-day time period for the ATI request does not explain why the Complainant was not able to submit his complaint to the CHRC within the one year limitation period (which ended February 6, 2005) prescribed in paragraph 41(1)(e) of the *Canadian Human Rights Act* (CHRA).

The PSC reiterates its support for the recommendation that, pursuant to paragraph 41(1)(e) of the CHRA, the CHRC should not deal with Mr. Cohen's complaint given the time that has elapsed between the last date of alleged discrimination and the date the complaint was submitted. We look forward to receiving notice of the CHRC's decision.

Yours sincerely,

*Maria Barrados*

Maria Barrados, PhD



Public Service Commission  
of Canada

Services Branch

Commission de la fonction publique  
du Canada

Direction générale des services

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November 1, 2005

Joshua Cohen  
25 Pine Glen Crescent  
Ottawa, Ontario  
K2E 6Y1

Mr. Cohen,

The purpose of this letter is to respond to your request that I send to you, in writing, some form of confirmation that you came in to review your Management Trainee Program Integrated Assessment Process file, for the purpose of a viewing under the Access to Information Act, on April 30, 2004.

If you recall, I was on holidays during the end of April of that year and, so, could not supervise your file viewing session myself. As a result, I cannot personally confirm that you were present on the day in question. However, while I was away, I was copied on an e-mail exchange between yourself and one of my colleagues, Maria Tsourounakis, who was the psychologist who sat in for me during your viewing session. In your exchange, a copy of which I have enclosed, Ms. Tsourounakis indicates her agreement to meet with you at 10:30 am on the morning of April 30<sup>th</sup>, 2004. I am hoping that this e-mail is sufficient for your needs, as Ms. Tsourounakis is off on extended leave and, as a result, is unable to personally confirm your meeting with her.

I wish you much luck in your endeavours.

Sincerely,

*Monique Bussière*

Monique Bussière  
Psychologist  
Public Service Commission of Canada

Canada 

p. 4





Public Service Commission  
of Canada

President

Ottawa, Canada  
K1A 0M7

Commission de la fonction publique  
du Canada

Présidente

Doc. 17 p. 52

Exhibit "8" 52

JUL 05 2005

This is Exhibit "8" referred to in  
the affidavit of Joshua Cohen  
sworn before me in Ottawa, Ontario,  
on the 26 day of April 2005  
Sylvie Roy  
Commissioner of Justice for the  
Federal Court of Canada Agente du greffe

Ms. Sherri Helgason  
Director  
Investigations Branch  
Canadian Human Rights Commission  
344 Slater Street, Room 940  
Ottawa, Ontario  
K1A 1E1

Dear Ms. Helgason:

Thank you for your letter of June 15, 2005, concerning Joshua Cohen's complaint against the Public Service Commission (PSC). In your letter, you advised that Mr. Cohen's complaint will be presented to the Canadian Human Rights Commission (CHRC) with a recommendation that, pursuant to paragraph 41(1)(e) of the *Canadian Human Rights Act*, the CHRC should not deal with the complaint given the time that has elapsed between the last date of alleged discrimination and the date the complaint was received.

It is my understanding that the alleged acts of discrimination occurred between January 14, 2004, and February 6, 2004; however, the complaint was not received until May 9, 2005. This represents a period of approximately 15 months, exceeding the prescribed time limit by three months. I also understand that the CHRC has the discretion to extend the one-year time limit; however, the complainant must provide a reasonable justification for the delay. I do not believe that a reasonable justification was provided. In fact, there was no contact with the CHRC for over nine months (between July 5, 2004, and April 25, 2005), and no other grievance or review procedure was pursued (there was no right of appeal in this case).

I believe,  
alleged  
discrimination  
to date.

\*

why...  
Exclusion  
Order  
private

... 12

YES  
C. Bent Challenges of Canada

Never heard  
CHRC  
filled in  
on June 15/05  
Ex 24

Canada

- 2 -

*this*

The complainant may argue that he contacted the CHRC within the prescribed time limit; however, the date on which the complaint was officially made is determinative (Tiedeman v. CHRC (1993), 66 F.T.R. 15 (T.D.)). Furthermore, should the CHRC decide to deal with the complaint, such action would be prejudicial to the PSC in terms of its ability to defend the complaint. The selection process at issue took place some time ago and several appointments were made as a result of the process.

Feb 26/84  
form.

Federal  
Employment  
within MTP  
is on-going...  
Room can always  
be made!

For the reasons I have stated above, the PSC fully supports the recommendation not to deal with Mr. Cohen's complaint. However, should you wish to discuss this further, the PSC representative in this matter is Lorna St. Louis, Legal Counsel. Ms. St. Louis may be reached at (613) 995-6323.

Yours sincerely,

*Maria Barrados*

Maria Barrados, PhD